

UNITED STATES DISTRICT COURT
SOUTHER DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA :
 :
 - against - :
 :
ARNOLD SQUITIERI, *et al.*, :
 Defendants, :
 :
ROBERT PERSICO, :
 Defendant. :
 :
-----X

**ORDER DENYING MOTION
TO SEVER**

05 Cr. 228 (AKH)

ALVIN K. HELLERSTEIN, UNITED STATES DISTRICT JUDGE:

Defendant seeks severance from the trial of the other RICO defendants charged with him in Counts One and Two of the superseding indictment of the above-captioned action on the ground that such joint trial would be improper in light of the antagonistic defenses defendant intends to assert and because defendant's chosen counsel, Mr. Barry Levin, will be unavailable on the trial date. Defendant's motion to sever is denied.

I hold that the first trial grouping as suggested by the government will result in no prejudice to the defendant and properly serves the interests of justice. See Fed. R. Crim. P. 14. Further, as the government has repeatedly asserted that the trial should last no more than ten weeks and as the trial will now consist of no more than three defendants, the concerns expressed by the Second Circuit in United States v. Casamento, 887 F.2d 1141 (2d Cir. 1989), are not implicated.


I hold further that the unavailability of Mr. Levin during the trial does not warrant severance. There is no absolute right to representation by counsel of one's choice. Wheat v. United States, 486 U.S. 153, 158-59 (1988) (citing Morris v. Slappy, 461 U.S. 1, 13-14 (1983)). Here, defendant has been on notice of the trial date since July 2005 and was cautioned at the

conference of February 17, 2006 that counsel's conflicting schedule would not provide a separate ground for severance.

In accordance with the foregoing, defendant's motion to sever is denied.

SO ORDERED.

Dated: New York, New York
March 31, 2006


Alvin K. Hellerstein
United States District Judge